of the charge: "But if the Metropolitan Bank merely sent to the defendant bank the bills of exchange with the bills of lading attached for collection, with no other instructions, either expressed or implied from the past relations of the parties, they would not be so justified in surrendering (the bills of lading) on acceptance only." The Bank of Commerce can be held liable to the owners of the drafts for a breach of duty in surrendering the bills of lading on acceptance of the drafts only after special instructions to retain the bills until payment of the acceptances. The drafts were all time-drafts. One, it is true, was drawn at sight, but in Massachusetts such drafts are entitled to grace.

What we have said renders it unnecessary to notice the other assignments of error.

The judgment of the Circuit Court is reversed and the record is remitted, with directions to award a new trial.

Supreme Judicial Court of New Hampshire.

WHIPPLE *v.* GILES.

The contract of a married woman to pay for services of an attorney in prosecuting a libel for divorce against her husband is not binding.

A married woman cannot bind herself by a mere personal contract so that an action can be maintained against her after the coverture has ceased, nor will such contract be implied against her by reason of services rendered during her coverture.

ASSUMPSIT.—The plaintiff was employed by the defendant, as an attorney-at-law, to procure for her a divorce on the alleged ground of extreme cruelty, and it was for services so rendered that this suit was brought. After the testimony had been taken, the proceedings for divorce were abandoned by her, and she directed the plaintiff to proceed no further, and the defendant thereafter lived with her husband as his wife until his death some year or two after. Since the death of the husband this suit was brought. If the plaintiff could maintain his action, he was to have judgment for the amount of his claim and taxable costs, otherwise a nonsuit was to be entered.

LADD, J.—It is settled that the common-law disability of a married woman to bind herself by contract, is not removed by statute in this state, except so far as regards her contracts respecting property which she holds in her own right. That was so decided in *Bailey* v. *Pearson*, 29 N. H. 77, upon the statute of 1846,

which was not materially different from Gen. Stats., ch. 164, sect. 13, and has been repeatedly reaffirmed since. This seems to me quite decisive of the present case. There is no just sense in which a contract by a married woman for the services of an attorney in procuring for her a divorce, can be said to be a contract respecting her separate property, even if she had such property, which does not here appear. I think the action cannot be maintained.

CUSHING, C. J.—"Assumpsit upon a mere personal contract made during coverture will not lie against a married woman, whether her husband be joined in the suit or not, unless such contract was made in respect to property held by the wife to her sole and separate use:" *Carleton* v. *Haywood*, 49 N. H. 314.

"Where a *feme covert*, holding property under the Act of 1846, signed a promissory note during the coverture, which did not appear to have been given on account of any contract growing out of the property—*held*, that it could not be recovered:" *Bailey* v. *Pearson*, 29 N. H. 77. Substantially the same doctrine is held in *Eaton* v. *George*, 40 N. H. 258; see, also, *Brown* v. *Glines*, 42 N. H. 160; *Eaton* v. *George*, 42 Id. 375; *Ames* v. *Foster*, Id. 381; *Shannon* v. *Canney*, 44 Id. 592; *Leach* v. *Noyes*, 45 Id. 364.

It appears from the cases cited, that, independently of statutory exceptions, it is generally true that a married woman cannot be bound by any contract expressly made by her during her coverture, or implied against her by reason of matters arising during the same time. I see nothing in the facts stated in this agreed case to take it out of the operation of the general rule in the case of *Morris* v. *Palmer*, 39 N. H. 123, where it was held that the services and expenses of an attorney employed by a married woman were necessaries; it was also held that the husband, and not the wife, was liable for them. It appears to me, therefore, that according to the agreement, there must be judgment of nonsuit.

SMITH, J.—At common law the contract of a *feme covert*, with certain very limited exceptions, was void, and no action could be maintained thereon against her.

Under Gen. Stats., ch. 164, sect. 13, she has the same rights and remedies in relation to any property which she holds in her own right, and may sue and be sued in her own name upon any contract by her made or for any wrong by her done in respect to such property, as if she were unmarried. The statute does not, either in terms or by implication, apply to any contracts made by

a married woman, other than those regarding such property. This is well settled in all the cases that have come before the court since the passage of the Act of 1846, which was the first departure from the doctrine of the common law in the legislation of this state;—see authorities cited in defendant's brief. It seems wholly unnecessary to refer to the cases upon this subject in our reports. A single case will suffice;—see *Shannon* v. *Canney*, 44 N. H. 592, where it was held that "a married woman is not bound by a promissory note given during coverture, although at the time of her marriage she had, by inheritance, both real and personal estate, unless it be shown that such estate was held to her sole and separate use, and that the promise was made in respect to that estate."

There can be no pretence that the contract made by this defendant with the plaintiff had any reference to or connection with any property held by her in her own right. It follows, therefore, that this action cannot be maintained.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[2]
SUPREME COURT OF NEW JERSEY.[3]
SUPREME COURT OF OHIO.[4]
SUPREME COURT OF PENNSYLVANIA.[5]

ACTION.

Joinder of Parties—Not necessary where no Unity of Estate.—The plaintiffs were owners of the franchise of a ferry over the Delaware river from the town of C. to the opposite Pennsylvania shore, under a grant by the legislature of New Jersey. One D. was the owner of the landing on the Pennsylvania shore, and had a grant from the legislature of Pennsylvania of the exclusive right of ferriage from that shore. By arrangement between the owners of the two franchises, a ferry was run between the two landings for mutual benefit. The ferry was made valueless by the erection of the defendants' bridge over the river. In proceedings to recover compensation for the injury to the ferry, under defendants' charter, *held*, that the action was properly brought by the plaintiffs, without joining the owner of the Pennsylvania franchise.

[1] From J. W. Wallace, Esq., Reporter; to appear in vol. 22 of his Reports.
[2] From John M. Shirley, Esq., Reporter; to appear in 55 N. H. Reports.
[3] From G. D. W. Vroom, Esq.; to appear in vol. 9 of his Reports.
[4] From E. L. De Witt, Esq., Reporter; to appear in 25 Ohio State Reports.
[5] From P. Frazer Smith, Esq., Reporter; to appear in 77 Pa. State Reports.